(8) (8)

Nos. 04-805 and 04-814

Supreme Court, U.S.
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In The
Supreme Court of the United States

TEXACO, INC.,

Petitioner,

v.

FOUAD N. DAGHER, *ET AL.*,

Respondents.

SHELL OIL COMPANY,

Petitioner,

v.

FOUAD N. DAGHER, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS IN RESPONSE TO BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE*

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Respondents above-named (hereafter "respondents" or "plaintiffs") submit this supplemental brief in response to the brief for the United States as *amicus curiae* ("United States brief"), which advocates that this Court accept certiorari for the purpose of reversing the decision of the court of appeals in this case.

The Government urges this Court to accept certiorari because the Government claims that the lower court's decision is an "unwarranted expansion of the per se rule" (United States brief, p. 19), which "upsets the previously settled understanding of the scope of per se liability" (*id.*, p. 7), and "chills legitimate and beneficial economic activity by raising the specter of per se liability for efficiency-enhancing joint ventures" (*id.*, p. 17). These contentions are wrong.

The principal problem with the Government's position is that, in order to criticize the court of appeals decision, the Government assumes as true a critical fact in this case, which the petitioners have not only failed to prove, but also affirmatively disclaimed and denied. Repeatedly, throughout its brief, the Government asserts that the price restraint at issue in this case, petitioners' fixing the same price for the Shell and Texaco brands, was "integral" to their joint ventures. (*Id.*, pp. 15, 16, 18, 20 n.1.)

A basic, crucial, and unrefuted fact of this record, however, is that petitioners never claimed that their ventures' identical pricing of the Shell and Texaco brands was integral to the ventures' operations or alleged efficiencies. It was instead a direct restraint on price for which they claimed *no* procompetitive justification. The court of appeals specifically found, "The defendants have thus far failed to offer any explanation of how their unified pricing of the distinct Texaco and Shell brands of gasoline serves to further the ventures' legitimate efforts to produce better products or capitalize on efficiencies. Nor does the record contain facts sufficient to warrant our drawing any such inference." *Dagher v. Saudi Refining, Inc.*, 369 F.3d 1108,

1122 (9th Cir. 2004).[1] For the Government to claim otherwise and maintain that the pricing restraint at issue was "integral" to the ventures' operations is flatly contradicted by the voluminous evidence of record.[2] The Government's entire argument thus rests on a theoretical premise that is contradicted by extensive evidence of record from the mouths of the oil companies' own top executives. As this Court has said, "Legal presumptions that rest on formalistic distinctions, rather than actual market realities, are generally disfavored in antitrust law. This Court has preferred to resolve antitrust claims on a case-by-case basis, focusing on the 'particular facts disclosed by the record.'" *Eastman Kodak Co. v. Image Technical Servs.*, 504 U.S. 449, 466-67 (1992).[3]

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[1] Executives of Shell, Texaco, and both ventures all testified that setting the same price for the Shell and Texaco brands had *absolutely nothing* to do with any claimed efficiencies, competitive benefits, or purposes of the ventures. (*See* deposition testimony of Messrs. Bijur, Tilton, Darnley, Burch, Williams, and Berry in Supplemental Brief Appendix ("App."), pp. 1-12, attached hereto.)

[2] This evidence was in fact provided to the Government by respondents on January 18, 2005. *See* e-mail from respondents' counsel to Antitrust Division enclosing "materials from the Ninth Circuit record showing the testimony that price-fixing had nothing to do with the claimed efficiencies of the joint ventures, and that any cost savings were not passed on to consumers." (App., pp. 13-14, attached hereto.)

[3] Although this is the Government's most crucial misreading of the record, it is not the only one. For example, the Government asserts that respondents constitute "a class of 23,000 gas station owners in the western United States" (United States brief, p. 1); and that "the dispute before this Court involves Equilon, which petitioners formed to own and operate their downstream assets in the western United States," (*Id.*, p. 2), because "the district court granted petitioners summary judgment on all claims related to Motiva . . . " (*Id.* n.3.) The Government is wrong in all particulars. Respondents consist of a *nation-wide* class of Shell and Texaco dealers; the lawsuit involves the oil companies' price fixing for both Equilon and Motiva; and the summary judgment affirmed by the court of appeals relates only to the presence of Saudi Refining, Inc., as a defendant in this action, and not to price fixing by Shell and Texaco with regard to gasoline sales by Motiva. *Dagher*, 369 F.3d at 1110, 1114-16. Likewise, the Government asserts, "Respondents contended that the agreement constituted a per se violation of Section 1 of the Sherman

(Continued on following page)

The Government's false premise that the pricing restraint at issue was "integral" to the joint ventures wholly vitiates and undermines the Government's argument for granting certiorari. In this case, which admittedly involves a direct restraint on price, not only have the oil companies acknowledged that the restraint was not integral to their ventures; they have also presented *no* evidence of a procompetitive justification for the restraint. In every case in which this Court has considered the lawfulness of a restraint imposed by a joint venture or other collaboration of competitors, this Court has required a showing of procompetitive benefits in order to sustain the lawfulness of the restraint. *Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc.*, 441 U.S. 1, 19-24 (1979); *NCAA v. Board of Regents of the Univ. of Oklahoma*, 468 U.S. 85, 103-04, 109-10 (1984); *National Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 690-95 (1978); *F.T.C. v. Indiana Fed'n of Dentists*, 476 U.S. 447, 459-61 (1986).

In *Broadcast Music*, this Court denied *per se* treatment for blanket licensing of musical compositions, because the Court found that blanket licensing was integral to creation of "a different product," which carried with it substantial procompetitive benefits. 441 U.S. at 22-23. This Court observed, "Joint ventures and other cooperative arrangements are also not usually unlawful, at least not as price-fixing schemes, where the agreement on price is necessary to market the product at all." 441 U.S. at 23.

Act, 15 U.S.C. 1." (United States brief, p. 2.) This ignores that respondents also premised their "claim on either a *per se* rule or a 'quick look' theory of liability." *Dagher*, 360 F.3d at 1113. The Government claims, further, that the oil companies "transferred all of their domestic downstream assets" to their joint ventures. (United States brief, p. 2.) The Government neglects to mention, however, that "Each [oil company] retained its own trademarks and kept control over its own brands pursuant to separate Brand Management Protocols, each of which prohibited the joint ventures from giving preferential treatment to either brand. Under the joint venture agreements, Equilon and Motiva market Shell and Texaco gasoline under licensing agreements governing both the sale of the products and the use of the Shell and Texaco trademarks." 369 F.3d at 1112.

Here, Shell and Texaco themselves have disclaimed any such necessity for charging the same price for their brands. Moreover, the Shell and Texaco ventures produced no new product, as did ASCAP and BMI, and virtually every other joint venture whose practices have been found lawful under the antitrust laws.

In *NCAA v. Board of Regents*, in holding restraints on the televising of college football to be in violation of Section 1 under a quick look rule of reason, this Court expressly stated that a "naked restraint on price and output requires some competitive justification even in the absence of a detailed market analysis." 468 U.S. at 110. Likewise, in an accompanying footnote, the Court stated:

> The Solicitor General correctly observes:
>
> "There was no need for the respondents to establish monopoly power in any precisely defined market for television programming in order to prove the restraint unreasonable. Both lower courts found . . . the NCAA television restrictions have reduced output, subverted viewer choice, and distorted pricing. *Consequently, unless the controls have some countervailing procompetitive justification, they should be deemed unlawful regardless of whether petitioner has substantial market power over advertising dollars. . . .*" [*Id.*, n.42; emphasis added.]

Here, in supporting a naked restraint on price for which no procompetitive justification is offered, the Government takes exactly the opposite position.[4]

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[4] Also in *NCAA*, this Court provided the following gloss on its decision in *Broadcast Music*:

> While joint ventures have no immunity from the antitrust laws, as *Broadcast Music* indicates, a joint selling arrangement may "mak[e] possible a new product by reaping otherwise unattainable efficiencies."
>
> * * *

(Continued on following page)

In *Indiana Fed'n of Dentists*, this Court again expressly required a procompetitive justification for a restraint on price or output:

> Absent some countervailing procompetitive virtue – such as, for example, the creation of efficiencies in the operation of a market or the provision of goods and services, *see Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., supra*; *Chicago Board of Trade, supra; cf. National Collegiate Athletic Assn. v. Board of Regents of Univ. of Okla.*, 468 U.S. 85, 104 S.Ct. 2948, 82 L.Ed.2d 70 (1984) – such an agreement limiting consumer choice by impeding the "ordinary give and take of the market place," *National Society of Professional Engineers, supra*, 435 U.S. at 692, 98 S. Ct., at 1365, cannot be sustained under the Rule of Reason. [476 U.S. at 459.]

In *National Soc'y of Prof'l Eng'rs*, this Court also required that any restraint on price or output be justified by a showing of competitive benefits, and said that not doing so while arguing that competition itself was inadvisable was "nothing less than a frontal assault on the basic policy of the Sherman Act." 435 U.S. at 695.

Every significant lower court joint venture decision has followed this Court's directive in requiring a procompetitive justification for restraints on price and output, generally by requiring a showing that any such restraint is ancillary, rather than naked, in the sense that it is reasonably necessary to achieving the efficiencies, benefits, or purposes of the joint venture at issue. *Polk Bros., Inc. v. Forest City Enterprises, Inc.*, 776 F.2d 185, 188-89 (7th Cir. 1985); *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 214, 224, 229 (D.C. Cir. 1986); *National Bancard Corp. v. Visa U.S.A., Inc.*, 779 F.2d 592,

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In *Broadcast Music*, the availability of a package product that no individual could offer enhanced the total volume of music that was sold.

468 U.S. at 113-14 (footnote omitted). As indicated, the Shell and Texaco ventures produced no new product.

599, 601, 603 (11th Cir. 1986); *see Augusta News Co. v. Hudson News Co.*, 269 F.3d 41, 48 (1st Cir. 2001); *Fraser v. Major League Soccer, L.L.C.*, 284 F.3d 47, 59 (1st Cir. 2002); *Freeman v. San Diego Bd. of Realtors*, 322 F.3d 1133, 1151 (9th Cir. 2003). This, of course, is exactly the approach followed by the court of appeals in this case. The Government is simply wrong in contending that "[t]he court of appeals compounded its error by applying the ancillary restraints doctrine to this case." (United States brief, p. 13.) *See* H. Hovenkamp, *XI Antitrust Law*, 2d ed., Section 1908b at 253 (2005):

> **Relevance of inclusion in presumptively efficient joint venture or other transaction.** Determining ancillarity requires the tribunal to consider *first*, whether any aspect of the defendants' association contains a significant promise of integration or cooperation yielding an increase in output. *Second*, some determination must be made whether the challenged agreement is an essential part of this arrangement, whether it is important but perhaps not essential, or whether it is completely unnecessary.

The Government goes even further astray, urging a doctrinal distinction that does not exist in the case law when it claims that "the court of appeals' decision in this case is the first ruling to apply the ancillary restraints doctrine to constraints on the joint venture's *own* conduct." (United States brief, p. 15, emphasis in original.) To the contrary, the ancillary restraints doctrine has routinely been applied to restraints within joint ventures. *See Broadcast Music, Inc.*, 441 U.S. at 19-24; *Freeman v. San Diego Bd.*, 322 F.3d at 1151; *National Bancard v. Visa*, 779 F.2d at 599, 601, 603.

Moreover, current scholarship regards the court of appeals decision "as a case that applies these generally accepted standards," which "was correctly decided on its current record and should not be considered controversial. It provides helpful guideposts to the types of joint venture activities that trigger antitrust concerns." Bruce D. Sokler, Yee Wah Chin & Kathryn E. Walsh, *A Consideration of Dagher and the Antitrust Standard for Joint Ventures*, 1

NYU Journal of Law and Business 307, 321 (2004). This article further comments:

> In the case of joint venture pricing activities that are not properly ancillary to the venture's legitimate purposes, *per se* illegality may result. From this perspective, *Dagher* is in the mainstream of antitrust jurisprudence and breaks no new ground. The result in *Dagher* represents an unsurprising application of generally accepted antitrust standards to competitor joint ventures.
>
> * * *
>
> This reliance on fact-specific analysis in the overwhelming majority of cases ensures that beneficial economic activity is unlikely to be deterred by rigid rules of thumb. [*Id.*]

The evidence of record and all of the foregoing authorities show that there is no reason for this Court to grant certiorari to examine a pricing restraint by a joint venture that is neither integral to the venture's operation nor supported by any claimed procompetitive justification. Given the state of the record, the court of appeals holding that the pricing restraint can be *per se* illegal hardly constitutes an "unwarranted expansion of the per se rule," as the Government claims. The court of appeals quite properly concluded that the evidence of record allows a jury to find that Shell and Texaco imposed a direct restraint on the pricing of their brands of gasoline; that the restraint was not integral to the ventures or at all related to the purposes or claimed efficiencies or benefits of the ventures; and that the oil companies have shown no procompetitive justification for the restraint. On this evidence, there is nothing controversial or radical in the court of appeals holding that such a restraint can be subject to *per se* illegality.

Indeed, the issue in this case really is not whether to treat such a pricing restraint under the *per se* rule or the rule of reason, inasmuch as even the rule of reason requires a showing that the restraint at issue is incident to at least some procompetitive benefit. As this Court has

said, if there is a direct restraint on price, "some competitive justification" is required, and where it is not forthcoming, "the rule of reason can sometimes be applied in the twinkling of an eye." *NCAA*, 468 U.S. at 110, n.39, quoting from P. Areeda, *The Rule of Reason, Antitrust Analysis: General Issues*, 37-38 (Federal Judicial Center, June 1981).[5]

Here, however, Shell and Texaco have offered no procompetitive justification whatsoever for their pricing restraint on the Shell and Texaco brands. Hence, whether to apply the rule of reason or the *per se* rule is a non-issue, because Shell and Texaco have abjured proof of any competitive benefit, and their restraint is therefore unlawful whatever standard applies. Nor does the court of appeals decision here create any uncertainty for present or future joint ventures, contrary to the Government's hyperbole. The Government's brief is noteworthy for its failure to name a single joint venture that has demonstrated an actual adverse effect from the Ninth Circuit's decision.

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[5] [FN39.] "The fact that a practice is not categorically unlawful in all or most of its manifestations certainly does not mean that it is universally lawful. For example, joint buying or selling arrangements are not unlawful *per se*, but a court would not hesitate in enjoining a domestic selling arrangement by which, say, Ford and General Motors distributed their automobiles nationally through a single selling agent. Even without a trial, the judge will know that these two large firms are major factors in the automobile market, that such joint selling would eliminate important price competition between them, that they are quite substantial enough to distribute their products independently, and that one can hardly imagine a pro-competitive justification actually probable in fact or strong enough in principle to make this particular joint selling arrangement 'reasonable' under Sherman Act § 1. The essential point is that the rule of reason can sometimes be applied in the twinkling of an eye." P. Areeda, *The Rule of Reason, Antitrust Analysis: General Issues* 37-38 (Federal Judicial Center, June 1981).

Professor Areeda's hypothetical is of course squarely on all fours with the facts of this case, where one need only substitute Shell and Texaco for Ford and General Motors.

Certainly, the Shell and Texaco ventures, which terminated in 2002, before the court of appeals decision, cannot claim uncertainty from the decision. Avoiding liability under the court of appeals decision requires no more than showing that any challenged pricing "is sufficiently important to attaining the lawful objectives of the joint venture that the anticompetitive effects should be disregarded." *Dagher*, 369 F.3d at 1121.[6] This is nothing more than what the law has always required, since *United States v. Addyston Pipe & Steel Co.*, 85 F. 271 (6th Cir. 1898), *modified and aff'd*, 175 U.S. 211 (1899); *see* H. Hovenkamp, *XI Antitrust Law*, 2d ed., Section 1908b, at 253-59 (2005).

This case is simply not worthy of certiorari. There is no conflict between the Ninth Circuit's decision and any decision of any other circuit; the Government has shown no circuit split.[7] The decision of the court of appeals is also fully consistent with all prior decisions of this Court.[8] The

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[6] *See, also, Dagher*, n.14, citing, Thomas A. Piraino, Jr., *A Proposed Antitrust Approach to Collaborations Among Competitors*, 86 Iowa L. Rev. 1137, 1188-89 (2001).

[7] Although the Government claims that joint venture decisions in other circuits "have required joint venture partners to demonstrate the reasonable necessity of restrictions on their own conduct outside the venture," (United States brief, p. 14), this is a claimed distinction that no court has ever articulated, to respondent's knowledge, and that the cases themselves fail to support. *E.g.*, *Freeman v. San Diego Bd.*, 322 F.3d at 1151.

[8] The Government's effort to distinguish *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969) is both legally and factually unpersuasive. In *Citizen Publishing*, this Court affirmed summary judgment for the Government in a Section 1 challenge to a joint venture of newspapers in Tucson, Arizona. The newspapers had entered into a joint operating agreement, the salient features of which were described by the Court as follows:

> The purpose of the agreement was to end any business or commercial competition between the two papers and to that end three types of controls were imposed. First was price fixing. The newspapers were sold and distributed by the circulation department of TNI; commercial advertising placed in the papers was sold only by the advertising department of TNI; the subscription and advertising

(Continued on following page)

rule sought by petitioners and the Government – that price fixing by a joint venture requires no procompetitive justification – would create a sea change in Sherman Act Section 1 jurisprudence, establish a roadmap for price fixing, and undercut both private and public antitrust enforcement.[9]

On the other hand, if certiorari is denied, this case returns to the district court for trial and the development of a complete record, where, in accordance with more than a century of settled antitrust law, Shell and Texaco will have a full opportunity to show how their price fixing was integral or reasonably related to the claimed efficiencies or procompetitive aspects of their joint ventures (although the jury will of course be free to consider the disavowal of any such connection by all of their executives who have testified on the question).

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rates were set jointly. Second was profit pooling. All profits realized were pooled and distributed to the Star and the Citizen by TNI pursuant to an agreed ratio. Third was a market control. It was agreed that neither the Star nor the Citizen nor any of their stockholders, officers, and executives would engage in any other business in Pima County – the metropolitan areas of Tucson – in conflict with the agreement. Thus competing publishing operations were foreclosed.

394 U.S. at 134. This Court found the claimed Section 1 violations to be "plain beyond peradventure." 394 U.S. at 135-36. The Government argues that *Citizen Publishing* is distinguishable because the "agreement fixed prices and pooled profits for defendants' separately owned and produced news and editorial content." (United States brief, p. 13, n.12.) To the contrary, as this Court expressly stated, "Commercial advertising placed in the papers was sold only by the advertising department of" their joint venture, and "advertising rates were set jointly." 394 U.S. at 134. The Government is thus plainly wrong that *Citizen Publishing* is factually distinguishable. As the court of appeals correctly found, *Citizen Publishing* squarely applies and dictates the result in this case.

[9] The Government's position in this case, if adopted, could leave consumers without an antitrust remedy if the next oil company joint venture approved by the Government consists of three, four, or more major oil companies, who then decide to charge the same price for all their brands.

Dated: June 8, 2005

Respectfully submitted,

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CASE NO. CV-99-06114 GHK (JWJx)

FOUAD N. DAGHER, et al.,
Plaintiffs,

-vs-

SAUDI REFINING, INC., et al.,
Defendants.

DEPOSITION UPON ORAL EXAMINATION OF PETER BIJUR

TRANSCRIPT of the videotaped deposition of PETER BIJUR, called for Oral Examination in the above-entitled matter, said deposition being taken by and before LINDA BAYLES, a Certified Shorthand Reporter of the State of New Jersey, at the offices of CADWALADER, WICKERSHAM & TAFT, 350 Park Avenue, New York, New York, on May 31, 2001, commencing at 9:35 a.m.

* * *

[78] Q Did you discuss with Mr. Jum'ah or Mr. Carroll or Mr. Herkstrotter what the pricing would be under the alliance?

A Never.

Q Did the pricing have anything to do with the cost savings?

A No.

* * *

[81] A I just don't know. I don't know how to answer that question.

Let me say something here with respect to this because I think this is important.

All the synergies, all of the cost savings and the figures which we calculated had nothing to do with pricing, nothing.

* * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

. X

FOUAD DAGHER, et al,

Plaintiff,

-against-

CV-99-6114-GHK (MANx)

SAUDI REFINING, INC.,

Defendant.

. X

HELD AT: Texaco, Inc.
2000 Westchester Avenue
White Plains, New York
January 11, 2000 9:45 a.m.

Examination Before Trial of the Defendant, GLENN T. TILTON ON BEHALF OF TEXACO, INC., held pursuant to Agreement, at the above time and place, before a Notary Public of the State of New York.

* * *

[93] Q. And then the next page is, synergy opportunities by operations.

A. Correct.

Q. And it shows where the expected synergies are supposed to come from, right?

A. Correct. Correct.

Q. And if you look at the next page, the total of the synergies is expected to be about eight hundred million dollars.

A. That's correct.

Q. Okay. Are you aware of any cost savings or synergies that were anticipated as a result of charging the same prices for the brands in the same markets?

A. No.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DAGHER, ET AL	)	
	)	CASE NO.
vs.	)	CV99-06114 GHK
SAUDI REFINING, INC., ET AL	)	

ORAL VIDEOTAPED DEPOSITION
JOHN DARNLEY
February 16, 2001

ORAL VIDEOTAPED DEPOSITION OF JOHN DARNLEY, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 16th day of February, 2001, from 9:02 a.m. to 3:11 p.m., before Vickie G. Hildebrandt, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Equilon Services, L.L.C., 12700 Northborough Drive, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

* * *

[41] Q. Okay. Before you assumed your position, were you aware that work had been done by what's called the synergy team to analyze potential cost savings from the – if the alliance were formed?

A. I had heard and cannot remember any specific detail that there were – clearly one of the goals was to – to obtain cost savings from the creation of the alliance.

Q. Okay. And did you – did you learn that the – the parties believed there were potentially $800 million of cost savings to be realized from the formation of the alliance?

A. I heard that mentioned at a meeting, a large meeting with people and a number was – seems to approximate to that was mentioned.

Q. Okay. Now, are you aware of any potential cost savings that were anticipated from charging the same price for the Shell and Texaco brands in the – in the same markets?

A. No.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DAGHER, ET AL	)	
	)	CASE NO.
vs.	)	CV99-06114 GHK
SAUDI REFINING, INC., ET AL	)	

ORAL VIDEOTAPED DEPOSITION

LARRY BURCH

February 20, 2001

ORAL VIDEOTAPED DEPOSITION OF LARRY BURCH, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 20th day of February, 2001, from 10:09 a.m. to 4:21 p.m., before Vickie G. Hildebrandt, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker & Hostetler, L.L.P., 1000 Louisiana, Suite 2000, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

* * *

[42] Q. Right.

Okay. Let me show you what's marked as Exhibit 177. 177 – before I do that, there's something else I want to ask you.

When you – at the time you – just before you became the vice president of Motiva, after you learned you were

going to be, were you advised or did you become aware that one of the reasons for the [43] formation of the alliance was anticipated synergies or cost savings that would result from the alliance?

A. Yes.

Q. And did you hear the number $800 million?

A. Yes.

Q. Okay. Now – and you mentioned that after the alliance was formed – after Motiva was formed, you implemented this policy of charging the same price for the Shell and Texaco brands in the same area?

A. Yes.

Q. Okay. Was there any cost savings or synergy that resulted from doing that?

A. No.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DAGHER, ET AL	)	
	)	CASE NO.
vs.	)	CV99-06114 GHK
SAUDI REFINING, INC., ET AL	)	

ORAL VIDEOTAPED DEPOSITION
MARK WILLIAMS
January 19, 2001

ORAL VIDEOTAPED DEPOSITION OF MARK WILLIAMS, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 19th day of January, 2001, from 9:01 a.m. to 3:46 p.m., before Vickie G. Hildebrandt, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Fulbright & Jaworski, L.L.P., 1301 McKinney, 45th Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

* * *

[26] Q. You also – in your speech, you said the synergy team, quote, "found astonishing synergies," end of quote. What did you mean by "synergies"?

A. Synergies were largely opportunities to – to reduce costs by putting the merger together or in some cases to – to increase revenue or to – to – to use our assets, dispose of redundant assets, for example, but most of the synergies were – were related to costs and efficiencies and they were simply done by, you know, an analysis of – of

how business was done in the – the existing companies and how might it be done differently in a merged company.

Q. Now, was there any discussion that any cost savings would result from charging the same price for the Shell and Texaco brands?

A. No. The synergy team got – never got into pricing.

Q. Are you aware of any cost savings that have resulted from charging the same prices for Shell and Texaco brands?

A. I couldn't say.

* * *

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOUAD DAGHER, et al.	)	
	)	CV-99-6114-GHK (MANx)
vs.	)	
SAUDI REFINING, INC., et al.	)	

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF
LOUIS WILSON BERRY, JR.
December 8, 2000

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VIDEOTAPED DEPOSITION OF LOUIS WILSON BERRY, JR., produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 8th day of December, 2000, from 9:26 a.m. to 4:55 p.m., before Lori O'Koren, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Texaco, 1111 Bagby, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto. JOB NO. 01-48065

* * *

[44] Q. Now, one of the things that you – you mentioned that the synergy team looked at the possibility of cost savings resulting from the – from the alliance, right?

A. Uh-huh, yes.

Q. And that the cost savings were one of the [45] reasons for doing the alliance, right?

A. Uh-huh, yes.

Q. Are there any cost savings that you are aware of that are attributable to charging the same prices for the Shell and Texaco brands in the same pricing zones?

A. Not – not that I am aware of.

* * *

Schaub, Gayle M.

From: Shulman, Daniel R.
Sent: Wednesday, June 01, 2005 9:15 AM
To: Schaub, Gayle M.
Subject: FW: Shell/Texaco

----- Original Message -----

From: Adam.Hirsh@usdoj.gov
[mailto:Adam.Hirsh@usdoj.gov]
Sent: Tuesday, January 18, 2005 4:34 PM
To: Shulman, Daniel R.
Subject: RE: Shell/Texaco

Thanks, Dan. Yes, I will circulate to everyone here.

----- Original Message -----

From: Daniel.Shulman@gpmlaw.com
[mailto:Daniel.Shulman@gpmlaw.com]
Sent: Tuesday, January 18, 2005 4:41 PM
To: Hirsh, Adam
Subject: FW: Shell/Texaco

Here is the opposition we will be filing tomorrow to the motion of Visa, Coca Cola, and Microsoft to file an amicus brief in support of the petition in the Supreme Court. Apparently the case is of interest to the two biggest antitrust violators the Division has gone after in the recent past. I also enclose materials from the 9th Circuit record showing the testimony that price-fixing had nothing to do with the claimed efficiencies of the joint ventures, and that any cost savings were not passed on to consumers. I trust that you will distribute the enclosures to the appropriate people at the Division, including those who were at our meeting Friday, January 14.

----- Original Message -----

From: Schaub, Gayle M.
Sent: Tuesday, January 18, 2005 3:30 PM
To: Shulman, Daniel R.
Subject: Shell/Texaco

Opposition to Visa et al. motion to file amici curiae.pdf

Excerpts from Appellate Record.pdf

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